

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant has mitigated security concerns arising from the criminal conduct incidents of domestic violence through the passage of time and rehabilitation. Applicant did not deliberately falsify information on his security clearance application, thus mitigating personal conduct security concerns. Applicant's eligibility for a security clearance is granted.

CASENO: 06-24021.h1

DATE: 08/23/2007

DATE: August 23, 2007

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In re:)	
)	
-----)	ISCR Case No. 06-24021
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has mitigated security concerns arising from the criminal conduct incidents of domestic violence through the passage of time and rehabilitation. Applicant did not deliberately falsify information on his security clearance application, thus mitigating personal conduct security concerns. Applicant's eligibility for a security clearance is granted.

STATEMENT OF THE CASE

On August 18, 2005, Applicant completed his security clearance (SF 86) application.¹ On December 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant.² The SOR alleges security concerns under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. The SOR detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On February 2, 2007, Applicant submitted a notarized response to the SOR allegations, and elected to have his case decided at a hearing. On June 18, 2007, the case was assigned to me. A Notice of Hearing was issued on July 12, 2007. At the August 1, 2007 hearing, the Government introduced two Government Exhibits (GX) 1-2 into evidence without objections. Applicant testified and introduced Applicant Exhibits (AX) A-D into evidence without objections from Department Counsel. DOHA received the transcript (Tr.) on August 10, 2007.

FINDINGS OF FACT

Applicant admitted allegations in subparagraphs 1.a and 2.a in his SOR response under Guideline J and Guideline E.³ After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact:

Applicant is a 48-year-old employee of a defense contractor. After graduation from high school in 1977, he worked in his family's alarm business. Applicant completed several training courses in electronics and alarm systems for his work over the years. Eventually, he opened his own business. After retirement, he decided to work for a defense contractor. He has worked for his current employer since April 1999.⁴ He is twice divorced and is currently married with one biological son, who is seven years old, and two adult stepchildren.⁵

Applicant's third marriage has been very difficult and tumultuous. He and his wife lived together a few years before marriage. They had a child in 1999, and married in 2000. Many domestic instances have occurred over the years, and Applicant has filed charges against his wife several

¹GX 1(Application of Security Clearance (SF 86), dated August 18, 2005).

²This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

³Tr. 15.

⁴GX 1 (Application for Security Clearance (SF 86), dated August 18, 2005).

⁵Applicant also had two stepchildren in his first marriage. During his second marriage, he adopted a daughter.

times.⁶ Shortly after the marriage in 2001, Applicant's wife filed a charge for simple assault-domestic violence against him. After an argument led to a physical altercation, Applicant suffered eight broken ribs. When the police were called to the home, however, charges were filed against Applicant. His wife did not appear in court for the charges and there is no information on the disposition of the case.⁷

During this period in his marriage, Applicant's mother-in-law and father-in-law lived with him and his wife in his home. The parents-in-law were both alcoholics and were often evicted from their own home due to inability to pay the rent. When they lived with Applicant, they would drink heavily. On one occasion, December 20, 2001, Applicant decided he had enough. He told his wife, her two children, and her parents to leave the house. Things became heated. Applicant called 911. When the police arrived, his mother-in-law was passed out in front of the house and his father-in-law was passed out on the bed in one of the rooms. Applicant remembers that the entire family was taken to the police station, but does not recall what happened in court.⁸

On July 9, 2004, Applicant came home and found a female friend of his wife's smoking marijuana in front of his young son. His wife's friend was temporarily living with them at the time because her husband was in jail. Applicant told his wife that her friend needed to move out because he feared she would be a bad influence on his son. His wife said 'no' and they argued. Charges were filed, but Applicant was found not guilty of simple assault-domestic violence.⁹

In January 2005, he was charged and pled guilty to simple assault.¹⁰ This incident occurred after his wife moved out of the house with his son and neglected to tell him where they were going. Applicant found his wife with another man who had their son in his possession. Applicant argued with the man. He wanted his son and the man grabbed him. Applicant grabbed him and swung at him. The man filed charges against Applicant. Applicant was not arrested at the time of the incident. However, police came to his home and had an arrest warrant for him. He went peacefully with the police to the department, and was released under a signature bond.

Applicant was also charged with making threatening phone calls to this man. He testified credibly that he did not even know the man and did not make any threatening phone calls. He believes this was an attempt by his wife to tarnish his name. He testified at the hearing that he pled not guilty to any threatening or harassing phone calls. He thought the Judge dismissed the charges when the Judge learned that Applicant's wife was still married to him.¹¹ He was fined for each charge, totaling \$170.00. The Municipal Court report confirms the fines but details a conviction of Guilty on February 2, 2005 for both charges.

⁶Tr.19.

⁷Tr.

⁸Tr.62.

⁹GX 2 (Municipal Court citation).

¹⁰*Id.*

¹¹Tr. 36.

Applicant wanted his third marriage to succeed for the sake of his only biological son. He admitted there were so many times that he and his wife argued that he did not always remember the exact incident. He was adamant that he filed charges against his wife several times and that he has never struck a woman. He paid many fines in court after the domestic violence incidents, but he believed his name had been cleared. Applicant feared that he and his wife would lose custody of their son. He went to parenting class alone. He even considered filing for divorce so that he could keep his son safe. He voluntarily went to anger management classes and a family values class in late 2004. He also attended parenting counseling. Applicant sought such education voluntarily because he wanted to save the marriage for his only son. He also was concerned that if a custody issue arose in the future, he would be in a stronger position with the family counseling. He, his wife, and their son now live alone in the family home. His wife's parents are now deceased and the two stepsons are out of the home.

In August 2005, Applicant, his wife, and son were together. Hurricane Katrina forced them to move to another state after they lost their home in the flooding. His son attended a new school and was doing well. Applicant continued to do well at work and received a promotion. Applicant obtained family counseling for six months, from February until July 2006. The family situation was steadily improving.

On November 5, 2006, Applicant, his wife and his seven year old son were in an automobile accident on November 5, 2006. Their car was hit at a great speed, and all three were injured. Applicant's wife suffered very serious injuries to her hip and leg. She required physical therapy and still has trouble with her mobility. Applicant's son was traumatized by the accident, and received counseling at his school. Applicant states the accident, although tragic, has brought them together as a family. He spends more time with his son. His wife is less volatile and has seen a counselor. Applicant feels they all work together as a team. There have been no incidents in more than two years. He now has tools to deal with disagreements when they arise.

When Applicant completed his security clearance application on August 18, 2005, he responded "no" to **Section 23. F Your Police Record:** In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) In his first answer to the SOR, he did not respond to this allegation. A second request was made for him to answer the SOR. This time he admitted to the charge of the falsification as to question 23 F on his security application. He said that after speaking with his security manager, he realized the need to disclose any incident regardless of the outcome. At the hearing, he further explained that he believed because he had only paid a *fine* and it was less than \$150 that he did not have to list it on the SF 86. He acknowledged that he made a mistake by failing to disclose information related to the above. He elaborated that when he went through the paperwork prior to the hearing, he spoke to his security manager who told him that any violation should be listed on the security form, even if Applicant was only charged and found not guilty. At the hearing, Applicant seemed quite confused about the various incidents. He said that there were so many domestic situations that he believed as long as he was found not guilty his record was clear. In fact, on the security application he made other mistakes such as not listing his son or his stepchildren. He also believed that when he paid a *fine* for the 2005 simple assault and harassment that it was not a conviction. At the hearing, he stated it was so confusing that he needed a hearing to clear up the answers that he gave to the SOR. I found his testimony credible. He did not intend to deceive or lie about the domestic charges.

Applicant earned a Certificate of Achievement from his current employer in 2006.¹² He is noted for extraordinary professional performance, going above and beyond normally assigned duties by assuming additional responsibilities in an outstanding manner, and supporting three shipyards and saving costs to the facility. When his facility was inspected by Homeland Security, his group received an award due to the extraordinary performance.¹³ In addition, his position requires diligence, attention to detail and exemplary security protocol as to all things pertaining to the national defense. Applicant served admirably in his capacity.¹⁴ He has received three promotions and supervises a large number of employees. He is in charge of all security for his company.

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”¹⁵ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”¹⁶ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁷ An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of

¹²AX A (Certificate of Achievement) dated June 29, 2006.

¹³AX B (Certificate of Achievement) dated December 11, 2006.

¹⁴*Id.*

¹⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹⁶ Directive, ¶ E2.2.1.

¹⁷ Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

continuation or recurrence.¹⁸

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.¹⁹ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²⁰ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²¹ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²²

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determinations as to Applicant’s allegiance, loyalty, or patriotism.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline J: Criminal Conduct

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

Criminal Conduct Disqualifying Condition (CC DC) AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*) and CC DC AG ¶ 31(c) (*allegations or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*) applies. Applicant acknowledged that he was involved in the three altercations (domestic violence). Moreover, he has a February 2005 conviction for simple assault and threatening phone calls.

Mitigating Condition (MC CC) AG ¶ 32(a) (*so much time elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment*) applies in this case. Applicant’s conviction for simple assault occurred when he was trying to get his son back from a stranger. Despite the fact that Applicant believed he only received a fine, his court records confirm the

¹⁸ *Id.*

¹⁹ Directive, ¶ E3.1.14.

²⁰ Directive, ¶ E3.1.15.

²¹ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²² Directive, ¶ E2.2.2.

conviction. However, the domestic situation has drastically improved since that time. For more than two years, the family has lived without incident.

Applicant's marriage was in crisis for a period of years. His alcoholic in-laws added to the crisis. His wife's sons were also in the home at one point. His wife left the home and took his only son without Applicant's knowledge. Today, his in-laws are deceased and he and his wife have had counseling. MC CC AG ¶ 32(b) (*the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life*) partially applies.

MC DC AG ¶ 32(d) *there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*) applies. Applicant has voluntarily sought family counseling, anger management classes and family values classes. He has persevered because he wants to provide a good, safe home for his son. He has been very successful in his work. He has not mishandled anything and has garnered promotions and praise..

Guideline E: Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant answered "no" to Question 23 (f). He did not list any domestic violence incidents on his security application for a number of reasons. He did not believe his record had any convictions, thus he had nothing to report. He believed that because he had paid fines each time he went to court, the actual charges had been dismissed.

Applicant did not answer the allegations as to falsification the first time. When he received the SOR the second time, he spoke to his security manager who advised him to list any thing that ever happened. He then admitted to allegation 2.a because he had omitted that information. He requested a hearing to explain the confusion. I found his testimony credible. He misunderstood the question at the time and did not know that he had to list the domestic violence until after he spoke to his security manager. He did not intend to deceive or lie. Thus, Personal Conduct Disqualifying Condition (PC DC) 16 (a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefit or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) does not apply.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering

the “whole person” concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the “whole person” in evaluating Applicant’s security clearance determination. Applicant is a hard working man who excels in his professional life. He has worked through several crisis in his marriage. He values his wife and his only son. Despite stressors from his wife’s behavior, her parent’s alcohol and her difficult stepchildren, he persevered. He attended anger management classes, parenting classes and sought professional counseling. He wanted to make his marriage work for his family. The domestic violence issues were not because he was an abusive husband. At times he was the victim. He now has a better idea of how to handle difficult situations in his marriage. Many of the earlier pressures are not longer present in his marriage. Applicant has proven trustworthy in his work during these many years of his troubled marriage. He has received various promotions and certificates. There is little likelihood of a recurrence of past behavior. I find that it is clearly consistent with the interests of national security for Applicant to have a security clearance. Clearance is granted.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant’s request for a security clearance. Clearance is granted.

Noreen A. Lynch
Administrative Judge